

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE)	
)	
v.)	
)	ID No. 2105000996 (Coffield)
ELIJAH D. COFFIELD)	ID No. 2105000987 (Wing)
GREGORY WING,)	
)	
Defendants.)	

Submitted: September 21, 2022

Decided: December 8, 2022

ORDER

Upon Defendant Elijah Coffield's Motion to Sever Defendants and Charges

GRANTED in part and DENIED in part.

Joseph S. Grubb, Esquire, Erika R. Flaschner, Esquire, Anthony J. Hill, Esquire, and Paige Todaro, Esquire, Deputy Attorneys General, DEPARTMENT OF JUSTICE, 820 North French Street, Wilmington, Delaware 19801, Attorneys for the State.

Michael C. Heyden, Esquire, 1201 King Street, Wilmington, Delaware 19801, Attorney for Defendant Elijah Coffield.

Maureen Coggins, Esquire and Timothy Woodward, Esquire, The Palladian, 509 Swede Street, Norristown, PA 19401; and Jan A. T. van Amerongen, Esquire, OFFICE OF CONFLICTS COUNSEL, 900 North King Street, Suite 320, Wilmington, Delaware 19801, Attorneys for Defendant Gregory Wing.

WHARTON, J.

This 8th day of December, 2022, upon consideration of Defendant Elijah Coffield's ("Coffield") Motion to Sever Defendants and Charges;¹ and the State's response,² it appears to the Court that:

1. Coffield was indicted on May 10, 2021³ and reindicted on November 10, 2021, along with 14 codefendants, including codefendant Gregory Wing ("Wing").⁴ The reindictment charges all 15 defendants with Illegal Gang Participation, Conspiracy Second Degree (conspiracy to commit Illegal Gang participation), and Possession a Firearm During the Commission of a Felony ("PFD CF"), the felony being Illegal Gang Participation.⁵ There are 76 additional counts alleging various other crimes against various defendants. In particular, Coffield is charged with 31 counts. In addition to the three counts with which all defendants are charged, he is alleged to have committed the following crimes: Murder First Degree (two counts); Attempted Murder First Degree (five counts); Conspiracy First Degree (five counts); Possession of a Firearm During the Commission of a Felony (eight counts); Possession of a Firearm by a Person

¹ Mot. to Sever Defs and Charges, D.I. 40.

² Resp. to Defs.' Mot to Sever Defs. and Charges, D.I. 42. Co-defendant Gregory Wing has not submitted a response to the motion, nor moved for severance on his own.

³ Indictment, D.I. 1.

⁴ Reindictment, D.I. 15.

⁵ *Id.*, at Counts 1, 2.

Prohibited (“PFBPP”) (five counts); Reckless Endangering First Degree (one count); Attempted Assault in a Detention Facility (one count); and Conspiracy Second Degree (one count).⁶ With the exception of the Illegal Gang Participation, Attempted Assault in a Detention Facility, and the Conspiracy Second Degree charges associated with each of them, all of Coffield’s charges allege crimes occurring between September 8, 2020 and September 24, 2020.⁷ In 13 of those counts, Wing is charged as well (Wing is not charged with any counts of PFBPP).⁸

2. The State alleges that the defendants were members of a criminal street gang known as “NorthPak” between November 2018 and April 2021.⁹ The reindictment alleges 24 separate predicate acts establishing a pattern of criminal activity between November 12, 2018 and February 9, 2021.¹⁰ Of those 24 separate predicate acts, Coffield is alleged to have committed three with Wing and three on his own.¹¹ The State contends that NorthPak has been in an ongoing violent feud with another gang, the M-Block Grimey Savages (“MGS”) and its affiliates, resulting in numerous shootings and murders.¹²

⁶ *Id.*, at Counts 29-44, and 47-58.

⁷ *Id.*

⁸ *Id.*, at Counts 29-33, 35-37, and 39-43.

⁹ *Id.*, at Count 1.

¹⁰ *Id.*

¹¹ *Id.*

¹² State’s Resp. to Def.’s Mot. to Sever, at 1, D.I. 42.

3. Coffield asks the Court to sever his charges from all other co-defendants, including co-defendant Wing, the only co-defendant with whom he scheduled to be tried.¹³ He also seeks to sever the PFBPP and the gang participation charge from his other charges, and the charges that pertain to other defendants from charges that pertain to him.¹⁴

4. As to the PFBPP charges, Coffield argues that he would suffer prejudice if the trier of fact were permitted to learn that he is a convicted felon.¹⁵ The PFBPP charges allege that Coffield was adjudicated delinquent of Conspiracy Second Degree, which, if he had committed that offense as an adult would constitute a felony.¹⁶ As to the gang participation counts, he contends that the volume and strength of the evidence against his codefendants and the gang related predicate acts unrelated to him in the gang participation charge would unduly prejudice the jury against him on his murder charges.¹⁷ Further, the jury would likely be misled and/or confused by the complexity and volume of charges involving his codefendants leading it to be improperly influenced by evidence relevant only to his codefendants.¹⁸ Finally, he argues that evidence pertaining to the gang participation

¹³ Mot. to Sever Defs. and Charges, at ¶ 2, D.I. 40.

¹⁴ *Id.*

¹⁵ *Id.*, at 9.

¹⁶ Reindictment, Counts 34, 38, 44, 52, and 56, D.I. 15.

¹⁷ Mot. to Sever Defs. And Charges, at ¶ 9, D.I. 40.

¹⁸ *Id.*

charge likely will lead the jury to conclude that he is a bad person, and convict him on that basis rather than the evidence against him.¹⁹

5. In support of severing his trial from the trial of his codefendants,²⁰ Coffield assumes that his codefendants have given statements, portions of which could be interpreted as incriminating him, which he further assumes could be used by the State to establish his guilt.²¹ Citing *Bruton v. United States*,²² Coffield asserts that his Sixth Amendment right to confront witnesses against him would be violated were those statements to be admitted against him in his trial.²³ In his view, the only prophylaxis for the potential *Bruton* problem is severance of his trial from those of his codefendants.²⁴

6. Coffield's final severance request is that evidence of crimes in the reindictment with which he is not charged be excluded from his trial.²⁵ He submits that such evidence is "irrelevant and immaterial" to the charges against him and that the "residual effect of this evidence" would prevent the jury from reaching a reliable verdict as to his guilt or innocence.²⁶ Finally, he raises the specter of the defendants

¹⁹ *Id.*

²⁰ Coffield's trial already has been severed from all of his codefendants except Wing.

²¹ Mot. to Sever Defs. and Charges, at ¶¶ 10-12, D.I. 40.

²² 391 U.S. 123 (1968).

²³ Mot. to Sever Defs. and Charges, at ¶¶ 10-12, D.I. 40.

²⁴ *Id.*, at ¶ 12.

²⁵ *Id.*, at ¶¶ 13-15.

²⁶ *Id.*

inevitably raising overtly hostile antagonistic defenses such that it would be prudent to sever the defendants.²⁷

7. In response to Coffield's motion to sever the PFBPP charges the State acknowledges the merit in Coffield's contention that he would be prejudiced by the revelation that he had a prior adjudication of delinquency.²⁸ But, it does not agree that the solution requires a separate trial before a separate jury. It suggests three alternate approaches. First, it suggests sanitizing the reindictment by the parties stipulating to Coffield's prohibited status.²⁹ Second, it proposes a simultaneous bench trial on the PFBPP charges.³⁰ The State will agree to that arrangement if Coffield chooses that option.³¹ Finally, if Coffield desires a jury trial on the PFBPP charges, it suggests a bifurcated jury trial where those charges are severed, trial is conducted on the underlying charges, and after a verdict is returned, the same jury then hears evidence on the PFBPP charges.³²

8. In opposing Coffield's request to sever the gang participation charge, the State argues that the Court is bound by Delaware Supreme Court precedent. Specifically, in *Taylor v. State*³³ the Delaware Supreme Court held that the evidence

²⁷ *Id.*

²⁸ Resp. to Def.'s Mot. to Sever, at 12, D.I. 42.

²⁹ *Id.*, at 13.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*, at 13-14.

³³ 76 A.3d 791 (Del. 2013).

supporting the defendant's murder, attempted murder, and additional felony charges was "inextricably intertwined" with his gang participation charge, and, thus, the charges properly were tried together.³⁴ The State quotes *Taylor*, "[t]he evidence was relevant to prove the existence of a gang, as well as [the defendant's] knowing promotion of he [gang's] criminal purpose."³⁵ The State argues that the Delaware Supreme Court came to the same conclusion in *Phillips v. State*,³⁶ also a gang participation case.³⁷ The State notes that, similarly to Coffield, Phillips argued that joinder of the gang participation charges with his murder charges would allow the jury to hear evidence about the conduct of others that the jury could improperly attribute to him.³⁸ There, the Court found that the defendant's criminal behavior was "inextricably intertwined" with other criminal behavior and was relevant to demonstrate to motive for Phillips' actions.³⁹ The State contends that all of Coffield's alleged crimes are inextricably intertwined with his remaining charges because they are evidence of the existence of the NorthPak gang, the pattern of criminal activity, and his knowing participation in the gang.⁴⁰ Further, all of the

³⁴ Resp. to Def's Mot. to Sever, at 15 (citing *Taylor*, at 801), D.I. 42.

³⁵ *Id.*

³⁶ 154 A.3d 1146 (Del. 2017).

³⁷ Resp. to Def.'s Mot. to Sever, at 16, D.I. 42.

³⁸ *Id.*, citing *Phillips*, at 1158.

³⁹ *Id.*, at 16-17, citing *Phillips*, at 1158-59.

⁴⁰ *Id.*, at 18.

offenses are necessary elements of the gang participation statute.⁴¹ The State argues that while the criminal behavior of Coffield and other NorthPak gang members is intertwined, “so too is the primary purpose of the gang and the motive behind the violence – to shoot or kill opposing gang members.”⁴² Finally, the State suggests that an appropriate jury instruction, such as the one given in *Phillips*, would alleviate concerns about the jury inferring a general criminal disposition on Coffield’s part.⁴³

9. Turning to the charges where Coffield is not named as a defendant, the State agrees that they should be severed from the reindictment, but not from the gang participation charge specifying the predicate offenses.⁴⁴ The State contends that severance of predicate offenses would impair its ability to establish necessary elements of the gang participation statute.⁴⁵ Further, the State’s obligation to establish the existence of a criminal street gang requires it to produce evidence of association between codefendants, their connection to criminal acts, and the common purposes of the gang.⁴⁶ In the State’s view, all of that precludes severing the predicate offenses committed by others in the gang participation charge. It does

⁴¹ *Id.*

⁴² *Id.* at 19.

⁴³ *Id.*, at 20.

⁴⁴ *Id.*, at 21.

⁴⁵ *Id.*

⁴⁶ *Id.*, at 21-22.

agree, however, the counts charging offenses where neither Coffield, nor Wing is named, may be severed from the reindictment.⁴⁷

11. The State represents that neither Coffield, nor Wing gave a statement to law enforcement or to anyone else implicating the other, thus eliminating any *Bruton* issue.⁴⁸ Lastly, the State notes that Coffield does not proffer any specific defenses that either he or Wing might advance that would be hostile to the other.⁴⁹

12. Under Delaware law, a criminal defendant may be tried simultaneously for two or more offenses.⁵⁰ Offenses will only be tried together if they are “of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.”⁵¹ The Court, however, has discretion to sever if the defendant shows “a reasonable probability that substantial prejudice may result from a joint trial.”⁵² The Defendant must show that the alleged prejudice manifestly outweighs

⁴⁷ *Id.*, at 23. The Court understands this concession to mean that the State agrees that the reindictment may be redacted to remove those counts where neither Coffield, nor Wing is named.

⁴⁸ *Id.*, at 24.

⁴⁹ *Id.*

⁵⁰ Super. Ct. Crim. R. 8(a).

⁵¹ *Id.*

⁵² *Skinner v. State*, 575 A.2d 1108, 1118 (Del. 1990) (citing *Bates v. State*, 386 A.2d 1139, 1141 (Del. 1978)); see Super. Ct. Crim. R. 14.

the “dominant concern” of judicial economy and efficiency.⁵³ A showing of hypothetical prejudice is not enough.⁵⁴

13. Delaware recognizes three types of prejudice:

- (1) when the jury may cumulate evidence of the various crimes charged and find guilt when, if considered separately, it would not;
- (2) when the jury may use evidence of one crime to infer a defendant’s general criminal disposition in order to determine guilt of another crime/crimes;
- (3) when a defendant may be subject to embarrassment or confusion in presenting different and separate defenses to different charges.⁵⁵

14. When deciding whether to grant severance, the Court must consider each submission on a case-by-case basis.⁵⁶ Factors to consider include the number of charges,⁵⁷ the temporal and geographic proximity between acts,⁵⁸ and the reciprocal admissibility of evidence.⁵⁹ The Court also considers judicial economy.⁶⁰

⁵³ *State v. Howard*, 1996 WL 190045 at *4 (Del. Super. 1996) (citing *Drew v. United States*, 331 F.2d 85 (D.C. Cir. 1964); *United States v. Kenny*, 645 F.2d 1232 (9th Cir. 1981)).

⁵⁴ *Skinner*, 575 A.2d at 1118 (citing *Bates*, 386 A.2d at 1142).

⁵⁵ *Ashley v. State*, 85 A.3d 81, 84–85 (Del. 2014) (citing *Wiest v. State*, 542 A.2d 1193, 1195 (Del. 1988)).

⁵⁶ *Lampkins v. State*, 465 A.2d 785, 794 (Del. 1983).

⁵⁷ *McKay*, 382 A.2d, at 262.

⁵⁸ *State v. Hardy*, 2019 WL 4678123 (Del. Super. 2019).

⁵⁹ *Wiest*, 542 A.2d, at 1196 n. 3 (citing *Bates*, 386 A.2d at 1142); see *Getz v. State*, 538 A.2d 726, 734 (Del. 1988) (outlining the six guiding factors in determining admissibility of evidence of other crimes).

⁶⁰ *Mayer v. State*, 320 A.2d 713, 717 (Del. 1974).

15. Here, Coffield does not argue that the offenses are improperly joined. Rather, he argues that a joint trial will prejudice him in a variety of ways. First, as to PFBPP charges, the Court finds the State's suggested options for dealing with them reasonable. It makes no sense to the Court in terms of judicial economy to hold a separate trial on the PFBPP charges before a new jury at some future date where the State would be required to re-present its evidence on the possession element of the charge, rather than merely presenting its status evidence to the same jury that already heard the possession evidence. If the parties cannot agree on stipulated language regarding Coffield's prohibited status, the Court will hold a bifurcated trial, either a bench or jury trial at the parties' election. This determination is consistent with the Court's past practice and has the imprimatur of the Delaware Supreme Court.⁶¹

16. The Court declines Coffield's invitation to sever the gang participation charge from his other offenses.⁶² Resolution of this issue is controlled by *Taylor* and *Phillips*. Just as in *Taylor*, Coffield's contention that he would be prejudiced by proof of his alleged NorthPak membership and the activities of his alleged NorthPak codefendants is based on the faulty premise that the actions of his codefendants would not be admissible in a trial that did not include the gang participation charge.

⁶¹ *Monceaux v. State*, 51 A.3d 474 (Del. 2012).

⁶² And, presumably the related Conspiracy Second Degree (Count 2) and PFDCF charges (Count 3).

In addition to being relevant to prove the existence of NorthPak and Coffield's knowing participation in it, the same evidence would be admissible in a separate trial of Coffield's other charges.⁶³ Again, just as in *Taylor*, gang motivation and retaliation will be an important part of the State's case-in-chief to prove Coffield's motive to commit the violent crimes with which he is charged.⁶⁴ Without proof of motive, the otherwise "inextricably intertwined" crimes would seem to be pointless, disconnected, random acts of violence.⁶⁵ The Court is confident that, as in *Phillips*, when properly instructed, the jury will neither cumulate evidence among counts, nor infer a criminal disposition to find Coffield guilty.⁶⁶

17. Coffield's motion also seeks severance of his trial from the trial(s) of his codefendants.⁶⁷ As the Court understands the motion, Coffield is concerned that: (1) he will be blamed for the crimes of his codefendants if all of their charges are presented to the jury because it will be unable to segregate the evidence against him from that against his codefendants; (2) he would be prejudiced by the introduction of codefendants' statements improperly admitted violation of *Bruton*; and (3) there will be overtly hostile antagonistic defenses presented by his codefendant(s).⁶⁸ To a

⁶³ *See, Taylor* at 801.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Phillips*, at 1159.

⁶⁷ Mot. to Sever Defs. and Charges, at ¶¶ 10-16, D.I. 40.

⁶⁸ *Id.*

substantial extent, severance of defendants has already been accomplished. All of the defendants named in the reindictment will not be tried together. Coffield is scheduled to be tried with only a single codefendant – Wing. Further, as the State points out not all of the codefendants’ charges will be presented to the jury at trial – only the predicate offenses in Count 1. Finally, there appears to be no basis for Coffield’s *Bruton* and antagonistic defenses concerns.

18. The State does not oppose severing all charges where Coffield is not a named defendant (other than Wing’s charges) from Coffield’s trial, but it does not agree to sever the 24 predicate offenses set out in the gang participation charge.⁶⁹ Of those 24 predicate offenses, Coffield is named in six, either solely or with Wing.⁷⁰ Wing is named alone in three.⁷¹ Wing also is named alone in three counts of the reindictment.⁷² Thus, it appears to the Court that the State intends to present evidence on no more than 15 predicate offenses involving defendants other than Coffield or Wing. The State intends to present this evidence to establish the existence of NorthPak as a criminal street gang and to prove an association of codefendants committing criminal acts in furtherance of the common purposes or motives of the gang.⁷³ The admission of this evidence is fully consistent with the

⁶⁹ Resp. to Def’s Mot. to Sever, at 21, D.I. 42.

⁷⁰ Reindictment, at Count 1, D.I. 15.

⁷¹ *Id.*

⁷² *Id.*, at Counts 45, 46, and 79.

⁷³ Resp. to Mot. to Sever, at 21-22, D.I. 42.

holdings in *Taylor* and *Phillips*. Therefore, severance of the predicate offenses ascribed to others than Coffield and Wing is not warranted.

19. There appears to be no basis for severance based on *Bruton*. The State represents that neither Coffield, nor Wing gave a statement to law enforcement implicating *Bruton*.⁷⁴ As to civilian witnesses, the State represents that it will not elicit testimony from any of them about statements made by Coffield that incriminate Wing and vice versa.⁷⁵ Moreover, since Coffield has not identified any problematic statements himself, the Court concludes that *Bruton* does not require severing Coffield and Wing for trial.

20. Similarly, the allegation of mutually antagonistic defenses between Coffield and Wing does not warrant severance. At a minimum, Coffield must articulate what the mutually antagonistic defenses are before the Court will consider his request to sever on that basis. His mere assertion that “the defendants will be pointing the finger at each other which will be the focus of their defense”⁷⁶ is insufficient to trigger the Court’s consideration.

THEREFORE, for the reasons described above, the Court **GRANTS** Defendant Elijah Coffield’s Motion to Sever Defendants and Charges in the following parts:

⁷⁴ *Id.*, at 24.

⁷⁵ *Id.*

⁷⁶ Mot. to Sever Defs. and Charges, at ¶ 16, D.I. 40.

(a) The five counts of Possession of a Firearm by a Person Prohibited, Counts 34, 38, 44, 52, and 56, are severed for a bifurcated trial, either by the Court or by the jury empaneled to try the other counts against him and his co-defendant Gregory Wing at Defendant Elijah's Coffield's election; and

(b) The charges against all codefendants, other than codefendant Gregory Wing, are severed, but the predicate offenses alleged in Count 1, Illegal Gang Participation, are not severed.

In all other parts, Defendant Elijah Coffield's Motion to Sever Defendants and Charges is **DENIED**.

IT IS SO ORDERED.

/s/ Ferris W. Wharton
Ferris W. Wharton, J.